

Application No 10/800,494
Case No.: 5132A

U.S. PTO Customer

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Willauer et al.
Serial Number: 10/800,494
Filed: March 15, 2004
For: **Three-Dimensional Camouflage Fabric**
Group Art Unit: 1771
Examiner: Singh, Arti R.

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Signature:

Name: Ailissa D. Kohlman

Sir:

APPEAL BRIEF

The original claims of the above referenced application were the subject of a rejection in an Office Action dated July 15, 2005, and a final rejection in an Office Action dated December 19, 2005 rejecting claims 42-66. A Notice of Appeal for the above referenced application has been filed herewith. The following is a brief in support of the Appellant's position. The Commissioner is hereby authorized to withdraw any fees required for submission of this Appeal Brief from our Deposit Account No. 04-0500.

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(i) **REAL PARTY IN INTEREST**

The above referenced application is the subject of an assignment to Milliken & Company, located in Spartanburg, S.C., which is the real party in interest.

(ii) **RELATED APPEALS AND INTERFERENCES**

Appellant is not aware of any related appeals or interferences that may directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

(iii) **STATUS OF CLAIMS**

The above referenced application contains claims 1-66. Currently, only claims 42-61 and 63-66 are pending, and a copy of the claims as pending is attached as Appendix A. An amendment is submitted herein under 37 CFR 1.116 to cancel claim 62.

(iv) **STATUS OF AMENDMENTS**

An amendment is submitted herein under 37 CFR 1.116 to cancel claim 62.

(v) **SUMMARY OF CLAIMED SUBJECT MATTER**

The material 10 is a base textile 100 having a camouflage pattern 110 on an outer surface 111 of the base textile 100, such as a pattern resembling tree trunks, branches, limbs, twigs, leaves, rocks, grass, weeds, or other natural designs. The camouflage pattern 110 can also be regions or zones of differing colors and/or shades that have a tendency to blend with the surrounding environment. The material 10 includes flat regions 120 and puckered or wrinkled regions 130 in the base textile 100. As used herein the terms "flat" areas shall mean areas being relatively flatter than the "puckered or wrinkled" areas, and can include areas that are not necessarily flat but are flatter than the puckered or wrinkled areas. The puckered or wrinkled regions 130 help to create the three dimensional appearance of the material 10.

It has been found that subjecting the base textile 100 with the camouflage pattern 110 thereon to the above processes, creates a greater pick density (yarns per linear distance) in the areas that come into contact with the hot fluid streams over the areas that do not come into contact with the hot fluid streams. The greater pick density

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occurs in the warp and/or the fill yarns of the material, depending on the type of material used in the warp and fill yarns. The areas with the greater pick density coincide with the flat areas 120 of the material 10, and the areas with the lower pick density coincide with the wrinkled or puckered areas 130 of the material 10. Therefore, for a material 10 having a particular predetermined number of picks in the warp and the fill, the density of the warp and/or fill of the material 10 will be greater in the flat areas 120 than the wrinkled areas 130.

(vi) ISSUES TO BE REVIEWED ON APPEAL

- A. Whether Or Not Claims 42-66 Are Patentable Over Stagle et al. (US 5,445,863), herein after called "Stagle".

(vii) ARGUMENT

- A. **Whether Or Not Claims 42-66 Are Patentable Over Stagle et al. (US 5,445,863), herein after called "Stagle".**

Claims 42-66

The Office Action states that Stagle teaches a camouflage sheet having a three dimensional effect by stitching two opposite layers so that the two layers are drawn together, compressing the core material and creating different regions having different varying densities. Appellants respectfully disagree with this conclusion.

Stagle discloses a three layer structure of 2 planar sheet materials and a resilient core sandwiched between. The resilient core is compressed by stitching the first and second sheets together. However, Applicants assert that this compression does not create a base textile having flat regions being a density of a particular number of yarns per linear distance being greater than the yarns per linear distance of the puckered regions, as claimed. The resilient core of Stagle is made up of foam or fibers; (Col 5 line 46), not yarns. Furthermore, when the resistant core is compressed, the planar sheet materials maintain an even yarn density across the sheet. Stagle does not disclose that yarns per linear distance that vary from the flat to puckered regions are warp yarns or weft yarns. Further, while the Applicants' invention is a base textile having regions of different of yarns per linear distance densities, it is the Applicants' position that the camouflage sheet material of Stagle is many base textiles sewn

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together. In one embodiment, the camouflage sheet material of Stagle is three base textiles, a core material, and two outer layers of fabric sewn together.

Claims 46-51

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974), MPEP 2143.03. The Office Action states that the camouflage material of Stagle may have an optional pattern of leaves sporadically placed over the material. However, Stagle does not teach or suggest having the flat or puckered regions of the base material correspond with specific regions of the camouflage pattern or with images of objects in the camouflage pattern on the base textile.

Claims 54, 58-61, and 63-66

The examiner stated that the Slagle reference teaches the use of synthetic fabrics, but does not teach the use of specific weaves of plain, stain, knit, or nonwoven, etc. It was indicated that it would have been obvious to a person of ordinary skill in the art to use any one of these weaves, motivated by the reasoned expectation of the resultant properties of hand (smoothness) that would be reflected in the end product if a satin weave was chosen. However, as previously pointed out, Slagle does not teach, suggest, or provide a motive for having separate areas of a base textile with different yarn densities which create flat and puckered regions. Further, Stagle does not teach or disclose the base textile as a woven fabric, knitted fabric, or that the fabric is comprised of monofilament yarns, multifilament yarns, staple yarns, or textured yarns. Therefore, Applicant respectfully submits that there is no teaching, suggestion, or motive to combine the limitation of the separate yarn density areas to create puckered fabrics in any of the constructions noted. Therefore, Applicant respectfully submits that the claimed invention is not obvious in view of Slagle et al.

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Conclusion

For the above reasons, Appellant respectfully requests the Appeal Board to reverse the decision of the examiner. In the event that there are additional fees associated with the submission of these papers, Applicant hereby authorizes the Commissioner to withdraw those fees from our Deposit Account No. 04-0500. Also, in the event that additional time is required to have the papers submitted herewith for the above referenced application to be considered timely, Applicant hereby petitions for any additional time required to make these papers timely and authorization is hereby granted to withdraw any additional fees necessary for this additional time from our Deposit Account No. 04-0500.

March 15, 2006

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Respectfully submitted,



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(viii) CLAIMS APPENDIX

What Is Claimed Is:

- 1-41. (Cancelled)
42. (Previously presented) A multidimensional camouflage comprising a base textile having a camouflage pattern, the multidimensional camouflage including the base textile having a particular number of yarns per linear distance, wherein the base textile further comprises flat regions and puckered regions, said flat regions being a density of said yarns per linear distance being greater than said puckered regions.
43. (Original) The multidimensional camouflage according to Claim 42, wherein the yarns per linear distance are warp yarns.
44. (Original) The multidimensional camouflage according to Claim 42, wherein the yarns per linear distance are fill yarns.
45. (Previously presented) The multidimensional camouflage according to Claim 42, wherein said flat regions comprise columns extending along said base textile, and said second regions being disposed between the columns of first regions.
46. (Previously presented) The multidimensional camouflage according to Claim 42, wherein said flat regions of said base textile correspond with specific regions of the camouflage pattern of said base textile.
47. (Previously presented) The multidimensional camouflage according to Claim 42, wherein said puckered regions of said base textile correspond with specific regions of the camouflage pattern of said base textile.
48. (Original) The multidimensional camouflage according to Claim 42, wherein the camouflage pattern includes images of objects.
49. (Original) The multidimensional camouflage according to Claim 48, wherein the images of the object in the camouflage pattern comprise items selected from the group consisting of: tree trunks, branches, twigs, leaves, twigs, rocks, weeds, and grass.
50. (Previously presented) The multidimensional camouflage according to Claim 48, wherein the flat regions correspond with the images of objects in the camouflage

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pattern.

51. (Previously presented) The multidimensional camouflage according to Claim 48, wherein the puckered regions correspond with the images of objects in the camouflage pattern.
52. (Original) The multidimensional camouflage according to Claim 42, wherein base textile has an outer surface, and wherein the camouflage pattern is place on the outer surface of said base textile.
53. (Original) The multidimensional camouflage according to Claim 42, wherein the camouflage pattern is incorporated into the material forming the base textile.
54. (Original) The multidimensional camouflage according to Claim 42, wherein the base textile comprises a thermoplastic material.
55. (Original) The multidimensional camouflage according to Claim 54, wherein the thermoplastic material comprises polyester.
56. (Original) The multidimensional camouflage according to Claim 54, wherein the thermoplastic material comprises nylon.
57. (Original) The multidimensional camouflage according to Claim 54, wherein the base textile further includes a non-thermoplastic material.
58. (Original) The multidimensional camouflage according to Claim 42, wherein the base textile comprises a woven material.
59. (Original) The multidimensional camouflage according to Claim 58, wherein the woven material comprises yarns in a plain weave pattern.
60. (Original) The multidimensional camouflage according to Claim 58, wherein the woven material comprises yarns in a satin weave pattern.
61. (Original) The multidimensional camouflage according to Claim 42, wherein the base textile comprises a knit material.
62. (Cancelled)
63. (Original) The multidimensional camouflage according to Claim 42, wherein the base textile comprises monofilament yarns.

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64. (Original) The multidimensional camouflage according to Claim 42, wherein the base textile comprises multifilament yarns.
65. (Original) The multidimensional camouflage according to Claim 42, wherein the base textile comprises staple yarns.
66. (Original) The multidimensional camouflage according to Claim 42, wherein the base textile comprises textured yarns.

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IX. EVIDENCE APPENDIX

Applicant is not aware of any such evidence.

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X. RELATED PROCEEDINGS APPENDIX

Applicant is not aware of any such related proceedings.